

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Mary Jane Baker, Rick Durham, Albert Stewart, Bill Hobbs, and John Simmermon.

Members Absent: None

Also Present: Bill Maxwell, Interim Director, Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney.

### **CURRENT BUSINESS**

1. Roll call taken, all members present.
2. The minutes of the preceding meeting were distributed to each member prior to the meeting. Member Hobbs made a motion, seconded by Member Simmermon to approve the minutes. The vote was unanimous in favor of the motion.

### **CONTINUED PETITIONS**

1. Petition: 2010-SU-006 Special Use Zoning: AG  
Address: 12516 North 300 West, Alexandria, IN  
Location: East side of Co. Rd 300 West approximately ¼ mile North of State Road 28  
Petitioner: Gary and Pam Glass  
Request: Special Use to open a machine shop business in an existing barn on the same property as the primary dwelling (special use grant required to operate commercial business in an agriculture-zoned district)

Mr. Maxwell passed out a packet from Mr. Austin who is the attorney for Gary & Pam Glass. Mr. Austin indicated that the new building footprint would be 40 feet by 75 feet. He presented letters from neighbors that show support for the proposed special use. Mr. Austin indicated that they are following up on the septic system with the Health Department, and have contacted an Architect about the State Design Release.

Discussion held between the petitioners and Board Members. There were no remonstrators present. John Dockery, 214 East Church Street, Alexandria is in favor of this petition and thinks it will be an asset to Madison County.

Member Simmermon made a motion to approve Petition #2010-SU-006, stating that Finding of Facts have been resolved, we heard from Director Maxwell on the reason for the denial and we feel like that has been resolved, the equipment must remain within the building with no outside storage, they must obtain septic approval from the Board of Health, we recognize that they do only have 2 employees, and the State Design Release issue must be resolved. Member Durham

seconded the motion. Vote was unanimous in favor of the motion. **Petition 2010-SU-006**  
**Approved with conditions.**

(Continued from August 24, 2010)

2. **Petition:** 2010-SU-004 Special Use Zoning: R-2  
**Address:** 3770 Chisholm Drive, Anderson  
**Location:** N side of 100 North approximately ¼ mile W of 300 East  
**Petitioner:** Greg Mason  
**Request:** Special Use to provide for an addition to an existing Single-family dwelling resulting in a two-family dwelling (duplex not permitted in R2)

Mr. Maxwell informed the Board that the Special Use Petition was requested to provide for the construction of a 1,375 square foot addition to a single-family dwelling, resulting in a two-family dwelling.

Mr. Mason has submitted a new site plan with parcel being a corner lot. The ordinance states there shall be a 30' front setback in an R-2 zoning district. Mr. Mason does not show a 30' setback on his current site plan with the 2 front setbacks of 30'. The site plan change consists of the kitchen being renamed into a wet bar and in the minutes of the August meeting on page 846; Mr. Mason stated that the closest part of his structure would be 36.8 feet to the edge of the road. I have not seen a site plan with that dimension. I just have one showing the setback to be 12 feet 10 inches. R-2 zoning does not permit two family dwellings, and the staff is concerned about this setting precedence in this addition or any others that are zoned R-2.

No one was present representing this petition request.

Attorney Shine stated that it was his opinion that Mr. Mason was going to withdraw his petition and just apply for a building permit. Mr. Maxwell has not received an official withdraw from Mr. Mason. Attorney Shine stated that there are numerous residences with two kitchens (upstairs and downstairs); they are being constructed all over. If this design does not meet our setback requirements, he may have to come in and request a special exception or a variance from the setback requirements. Mr. Mason needs to give us something in writing if he chooses to withdraw his petition.

Discussion held with regard to property lines. Mr. Maxwell stated that we need a new site plan showing the lot lines.

There were no remonstrators present.

Chairman Baker made a motion, seconded by Member Stewart to continue this petition until the October meeting. The vote was unanimous in favor of the motion. **Petition 2010-SU-004**  
**Continued.**

**NEW BUSINESS**

1. Petition: 2010-SU-007 Special Use Zoning: AG  
Address: 9611 West SR 38, Lapel  
Location: S side of SR 38, approximately ¼ mile E of CR 1000 West  
Petitioner: Dashiell, Dana & Sandra  
Request: Special Use request to open a catering business in an accessory building on the same lot as their home.

Mr. Maxwell informed the Board that there is an issue with the septic system possibly leaking into the field to the east of their property. The following documents were distributed to the Board Members.

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**Judy King**

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**From:** Brandon Clidence  
**Sent:** Monday, September 27, 2010 3:44 PM  
**To:** Judy King  
**Subject:** 9611 W. State Rd 38, Pendleton, IN

Judy,

Joe and I went to the site to investigate the sewage complaint. There is an area east of the house in the bean field that is muddy and has the consistency and odor of sewage. It appears that based on the topography of the site, location of the discharge, and the proximity of the residence that it is being discharged from this property. At this time, there is not enough standing sewage to conduct any dye testing.

Because the sewage disposal system will be utilized for a residence and a catering business, the owners will need to contact the Indiana State Dept. of Health (ISDH) for design specs. I would suggest contacting ISDH Sanitary Engineering at (317) 233-7175. My guess is that it will make the most sense to utilize one sewage disposal system for the residence and the business. If, however, the catering business does not open, a sewage disposal system will still need to be installed for the residence. In that case, the owners will deal directly with us. Again, this is a unique circumstance because of the mix of residential and commercial.

Hopefully, this makes sense. Let the property owners know they can talk with me about questions they may have and we'll help them any way we can.

Thanks,

Brandon

9/27/2010



Sandra Dashiell informed the Board that 10 years ago when they purchased the property a dye test was completed and the inspector informed them that everything was fine. We have never had any standing water or any problems.

Discussion held between Board Members and Petitioners regarding septic issues. No remonstrators were present at this meeting.

Amber Crouse, daughter to Sandra Dashiell, informed the Board that they have been in contact with the Board of Health and were informed of the requirements that need to be met in order to get the certified kitchen and that included the septic, running the laterals. We came in front of the BZA Board to ask for a Special Use approval before going ahead with the installation of the laterals due to the costs involved.

Our company is Three Dolls Catering, and we are asking to use our accessory building for our catering business. This building is a little less than 500 square feet. The public will not be coming on our property.

Member Hobbs made a motion to approve petition 2010-SU-007 with the following conditions. You must receive State Board of Health approval for this type of kitchen, the septic issue, if it in fact is their issue, be resolved for both the residence and the future business, there will be no outside storage with the exception of the waste dumpster, and I base this on the findings of fact on the staff report which are listed below.

### **FINDINGS OF FACT**

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?*

No. This use will have no increased traffic to the area as indicated by the business plan, and will have no outside sign advertising this business activity.

2. *Will the requirements and development standards set forth in the district for such exception be met?*

Yes. The applicant has agreed to adhere to the requirements of the Ordinance as well as the submitted business plan/letter of intent.

3. *Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?*

No. The subject site can still be used for farming operations and will not include any additional or paved parking areas.

4. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?*

Yes. The Comp Plan does provide for Home Occupation type II businesses, which this type of facility comes under that listed special use.

Member Durham seconded the motion.

Member Simmermon asked who would follow up on the conditions that we place on this approval.

Attorney Shine said that the Planning Department will have that responsibility of making sure that the septic issue be resolved and all other conditions are met. Member Hobbs said we will need documentation from the County Board of Health and from the State Board of Health.

Vote unanimous in favor of the motion. **Petition 2010-SU-007 Approved with Conditions.**

2. Petition: 2010-V-006 Variance Zoning: AG  
Address: 8093 West SR 132, Lapel  
Location: South side of SR 132, approximately 1/8 mile west of CR 800 West  
Petitioner: Riffey, Melvin & Connie  
Request: Variance to construct a 2,400 sq. ft. barn in the same footprint as the old barn, which is 6 feet from the property line.

Melvin Riffey explained that the old barn is an old hog barn and not sufficient for farm storage. I would like to tear down the old barn and build a new pole barn 6' from the property line, which is where the old barn stands.

Discussion held between Board Members and Mr. Riffey on access for fire trucks if needed and reasons for this being 6' from the property line.

Member Simmermon made a motion to approve 2010-V-006 according to Findings of Facts stating that they have been resolved, and realizing that there is no fence on the property line and fire equipment could get in there if needed. Replacing over the existing footprint, the site in question seems to be okay. Member Hobbs seconded the motion.

Vote unanimous in favor of the motion. **Petition 2010-V-006 Approved.**

3. Petition: 2010-V-007 Variance Zoning: AG  
Address: 8975 South 800 West, Pendleton

Location: West side of CR 800 West, approximately 1/8 mile north of CR 900 South  
Petitioner: Jacobs, Brian & Susan  
Request: Variance to construct a 2,520 sq. ft. accessory structure in front of existing home.

Mr. Maxwell read the Staff Report.

Mr. Jacobs said that they would like to build a pole barn to store some auxiliary vehicles that we use around the place to keep up the driveway. This is about the only flat spot that does not have trees on it that I can put it. It is going to basically run adjacent to my driveway so I can pull the trailer into it from the driveway.

Attorney Shine stated that from a legal standpoint, we require a 50' right-of-way for entrance to property for safety concerns and this blocks that right-of-way and it is contrary to our rules.

Chairman Baker stated that this drive is 100' wide.

Mr. Jacobs stated that his neighbor had a fire back there and they could not get a fire truck back there then. The easement is covered with trees.

Charles A. Shelton, 5517 South New Columbus Road and I have a similar driveway problem. My daughter drives a ladder truck in Fishers and they are going to keep the fire truck 100' away from the fire to fight it anyway.

There were no remonstrators present.

Member Stewart made a motion to approve Petition 2010-V-007 with stipulation that he move the building back to 25' of the north property line. I don't feel that its going to be a detriment to anyone but him, and I assume that if it is ever subdivided that building would have to go because you couldn't put a street back through there with that building setting there & this is subject to the plans that were submitted as to it's location, just move it 45 feet. Member Hobbs seconded the motion. I would like to see a tie to the proposed pole barn that he has to that motion. My concern is he could make it bigger. I would like to see if Al would approve to amend his motion to include the plans that Mr. Jacobs submitted. Member Stewart amended his motion to approve the size of the building to what was presented to the Board.

Attorney Shine recommended that we table this petition for 30 days, locate where the utilities are, lets go out and look at it and everybody will be satisfied as to what the location is and make sure that it can be moved back to the 25'.

Member Stewart withdrew his motion to approve.

Chairman Baker asked for a Motion to table this petition until the next meeting, so that we can locate utilities.

Member Durham responded so moved.

Member Simmermon seconded the motion to table this petition.

Member Hobbs made a motion to remove the tabling of Petition 2010-V-007 and reopen the petition for further discussion.

Member Simmermon seconded the motion.

Vote was unanimous, tabling removed on Petition 2010-V-007.

Member Stewart re-instated his motion to approve petition 2010-V-007, with the following 3 stipulations. Move the proposed building back to 25' of the north property line, verification of the location of the utilities, and keeping the size of the building the same as what he presented to the board.

Member Hobbs seconded the motion.

Vote taken with four yes – Hobbs, Simmermon, Stewart, Baker, and one no – Durham.

Motion carried, **Petition 2010-V-007 approved with conditions.**

4. Petition: 2010-V-008 Variance Zoning: CR  
Address: 5517 South New Columbus Rd., Anderson  
Location: West side of New Columbus Rd., approximately ½ mile S of 800 South  
Petitioner: Shelton, Charles & Diane  
Request: Variance to construct an 896 sq. ft. accessory structure in front of existing home.

Mr. Maxwell reads the staff recommendations.

Charles A. Shelton, 5517 South New Columbus Road - I would like to build a 28' x 32' detached garage. The septic system lies in the front of our house to the south, so that area would not work. There is not any room to put in a driveway without crossing the lateral lines to get to the backside of my house. If the garage were to be placed on the west side, that is where my well is located and there are half a dozen large trees that would have to be removed to do this.

Member Stewart inquired on the number of parcels that the drive services.

Mr. Shelton replied that it services three homes right now. There is an easement from the road back to both parcels. All utilities run on the south side of the easement on poles to the tree line and then go underground back through the woods, but they still remain on the south side of the easement. At the closest point they would be about 50'-60' from the front of the garage.

There were no remonstrators present.

Member Hobbs made a motion to approve 2010-V-008 per the findings of fact.

### **FINDINGS OF FACT**

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?* No, the location of the proposed structure would not pose a threat to the general community.
2. *Will the requirements and development standards set forth in the district for such exception be met?* No. However, there is no sufficient area on the subject site to build the proposed accessory structure within the rules of the Ordinance without being located in the front of the primary dwelling.
3. *Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?* No, the surrounding properties are all developed in a similar manner.

4. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?* Yes, the property would be used for residential purposes.

Member Stewart seconded the motion.

Vote was unanimous in favor of the motion. **Petition 2010-V-008 approved.**

## **MISCELLANEOUS**

Member Simmermon made a request that in the future it would be beneficial to have the utilities marked on the map, as well as a topography map.

Attorney Shine informed the Board Members that we appeared before the Supreme Court on the KCCA matter, and he and Mr. Fowler (Attorney for JM Corp.) are thinking that we may have a decision by the end of the month.

Chairman Baker made a motion to adjourn the meeting, seconded by Member Hobbs.

Adjournment: 11:23:41 A.M.

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Mary Jane Baker, Chairman

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Elizabeth Bruns, Secretary